

REMARKS/ARGUMENTS

Applicants thank Examiners Holloman, Roberts and Lundgren for the courtesy of an interview extended to Applicants' representative on October 28, 2010. Arguments similar to those presented during the interview are reiterated below.

Claims 5, 6, 8, 9, 12 and 14-24 are pending in this application and remain as presented in the Amendment filed on June 10, 2010. Claims 5, 6, 8, 9, 12 and 14-23<sup>1</sup> are rejected under 35 U.S.C. §103(a) as obvious over Hinz in view of Fath. Claim 24 is rejected under 35 U.S.C. §103(a) as obvious over Hinz in view of Fath and further in view of Fukuchi. Applicants respectfully traverse these rejections.

At the outset, Applicants note that from the first reliance upon Hinz and Fath, the Office has focused on this extremely narrow spectrum of shampoos and conditioners and has lost sight of the bigger picture of the present invention which relates to a "method of treating hair" with two different "hair cosmetic compositions." In light of this bigger picture, Applicants point out to the Office that the claimed composition A (i.e., shampoo) and the claimed composition B (i.e., conditioner) represent atypical products that are a small sub-set of the more traditional products. Applicants also point out that (i) traditional shampoos typically contain citric acid as component (a), not malonic acid, maleic acid and/or malic acid as claimed; (ii) lactic acid as component (b) is common for pet products but is somewhat uncommon for human products; and (iii) glycolic acid as component (b) is typically only used for very specific purposes (e.g., treatment of chemically damaged hair and scalp).

While the Office has searched for the claimed invention and has cited two very specific references, namely Hinz and Fath, Applicants submit that the Office has failed to establish adequate motivation for one skilled in the art to 1<sup>st</sup> select an atypical shampoo from the vast realm of both typical and atypical shampoos, 2<sup>nd</sup> select the particularly claimed

---

<sup>1</sup> There appears to be a typographical error in the claim listing of this rejection. Therefore the claims listed here do not exactly match those recited in the Office Action.

atypical shampoo (i.e., composition A) from the genus of atypical shampoos, 3<sup>rd</sup> select an atypical conditioner from the vast realm of both typical and atypical conditioners, 4<sup>th</sup> select the particularly claimed atypical conditioner (i.e., composition B) from the genus of atypical conditioners, and finally, 5<sup>th</sup> combine the very specific selections of shampoo and conditioner in order to use them together to attain a benefit that is not recognized by either the selected shampoo or the selected conditioner (i.e., reduction in the signs of bending of the hair).

In addition to the above, Applicants point out that composition A (i.e., the shampoo) *as currently claimed* (see claims filed on June 10, 2010) does not read on the shampoos of Hinz and is not suggested by the shampoos of Hinz for at least the following reasons.

Components (a) and (c) of the claimed composition A are required to be “at a weight ratio of  $(a)/(c) = 0.6$  or greater” and component (a) is currently limited to malonic acid, maleic acid and/or malic acid. When considering that component (a) is now limited to only those polycarboxylic acids recited, and no others, Applicants submit that the shampoos of Hinz do not meet the claimed requirement of “ **$(a)/(c) = 0.6$  or greater.**”

More specifically, when one considers the shampoos of Hinz and considers malic acid as the only component (a) since Hinz fails to disclose malonic acid or maleic acid, the highest  $(a)/(c)$  ratio is **only 0.067** (see Example 4 of Hinz: 0.10 wt% malic acid and 1.50 wt% glycerol as component (c)) (also noting that Example 1 of Hinz does not contain malic acid, Examples 2, 3 and 5 provide an  $(a)/(c)$  ratio of only 0.03, and Example 6 provides an  $(a)/(c)$  ratio of only 0.05).

Even if one were to consider both malic acid and tartaric acid as component (a) since they are both polycarboxylic acids, Applicants note that the highest  $(a)/(c)$  ratio is **only 0.13** (see Example 4 of Hinz: 0.10 wt% malic acid, 0.10 wt% tartaric acid and 1.50 wt% glycerol as component (c); see also Example 5 of Hinz: 0.03 wt% malic acid, 0.10 wt% tartaric acid and 1.00 wt% glycerol).

Lastly, even if one were to consider all of the equivalently listed organic acids of Hinz as component (a) (i.e., glycolic acid, malic acid, glyoxylic acid, tartaric acid and pyruvic acid - see col. 1, lines 20-25 of Hinz), even though only malic acid and tartaric acid are polycarboxylic acids like claimed, Applicants note that the highest (a)/(c) ratio is **only 0.28** (see Example 5 of Hinz: 0.10 wt% tartaric acid, 0.05 wt% glyoxylic acid, 0.10 wt% pyruvic acid, 0.03 wt% malic acid and 1.00 wt% glycerol as component (c)). Furthermore, as Hinz focuses on the required presence of citric acid as component (a) and merely includes malic acid as a supplemental component (a), Hinz does not appear to provide one skilled in the art any motivation to increase the amount of malic acid present in order to increase the (a)/(c) ratio to that claimed, nevermind providing one skilled in the art the motivation to replace glycolic acid, glyoxylic acid, tartaric acid and/or pyruvic acid with additional malic acid.

In light of the foregoing, Applicants submit that Hinz, when properly interpreted in light of the examples, fails to disclose to one skilled in the art the benefits attributed to having an (a)/(c) ratio of 0.6 or greater (as claimed) rather than the significantly smaller ratios of Hinz of no more than 0.067, 0.13 or 0.28 (see above).

With this in mind, Applicants bring to the Office's attention Comparative Example 15 of Table 3 on page 27 of the specification of the present application which is a hair shampoo. This comparative example has an (a)/(c) ratio of 0.23 which is very similar to that of the 0.28 of Hinz discussed above (i.e., the largest possible (a)/(c) value of Hinz). As shown in Table 5 on page 29 of the specification, this comparative example attains a 75% recovery from signs formed by bending "rightly after" and a 94% recovery from signs formed by bending "one hour after" as well as a feeling upon use rating of "C." The inferiority of these results becomes apparent when compared with Example 12 of the present invention which has an (a)/(c) ratio of 0.66 (see Table 3). Example 12 attains a 79% recovery from signs formed by bending "rightly after" and a 97% recovery from signs formed by bending "one hour after" as

well as a feeling upon use rating of “A” (see Table 5). It should be noted here that the only difference between the shampoo of Comparative Example 15 and Example 12 is the (a)/(c) ratio.

Accordingly, Applicants again submit that Hinz fails to render obvious the claimed composition A (i.e., the shampoo component) which is required by the claims to have “a weight ratio of (a)/(c) = 0.6 or greater.”

Furthermore, since Fath is not drawn toward the shampoo component and only the conditioner component of the present claims, and since Fukuchi is relied upon by the Office merely for its alleged disclosure of hair cosmetic compositions comprising higher alcohols like those recited in dependent claim 24, Applicants submit that neither Fath alone, nor the combination of Fath and Fukuchi fulfill the above-described deficiencies of Hinz. As such, Applicants respectfully request withdrawal of the obviousness rejections of record over the combination of Hinz and Fath and the combination of Hinz, Fath and Fukuchi.

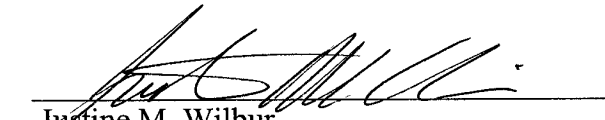
Lastly, in light of the Office’s concern regarding “small” differences in the percent recovery from signs of bending (e.g., a 5% difference between Example 11 and Comparative Example 11) as expressed in the outstanding Office Action (page 3) and as repeated in the interview of October 28, 2010, Applicants submit herewith a Declaration by Mr. Mizushima that shows the differences are significant and unexpected, even though small. Accordingly, Applicants respectfully request (i) that the Office *not* dismiss such small differences (e.g., 5%) as “substantially the same” (Office Action, page 3), and (ii) that the Office reconsider the significance and unexpected nature of the results shown by the comparison of Example 11 with Comparative Example 11, as well as the above-noted comparison(s) (e.g., Comparative Example 15 versus Example 12).

Application No. 10/566,498  
Reply to Office Action of September 2, 2010

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Accordingly, Applicants request passage of this case to issue.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.

  
\_\_\_\_\_  
Justine M. Wilbur  
Attorney of Record  
Registration No. 59,678

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 07/09)